

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1428 OF 2016

The Commissioner of Income Tax-LTU .. Appellant.
v/s.
M/s. Indian Petrochemicals Corpn, Ltd., .. Respondent.

Mr. Tejveer Singh, for the Appellant.
Mr. J. D. Mistri, Sr. Advocate with Mr. P. C. Tripathi and Mr. Amit Mathur
i/b. Mr. Raj Darak, for the Respondent.

**CORAM: AKIL KURESHI &
M.S.SANKLECHA, JJ.**
DATE : 22nd JANUARY, 2019.

P.C:-

The Revenue is in Appeal against the Judgment of the Income Tax Appellate Tribunal (in short “the Tribunal”), raising the following questions for our consideration:-

“(a) Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in allowing as revenue deduction the contribution of Rs.51,21,254/- made by the Assessee Company to various clubs run by and meant for the staff and their families at various places even though such expenditure was not allowable u/s. 40A(9) of the Income Tax Act?

(b) Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that notional sales tax exemption amount of Rs.60,65,07,100/- is a capital receipt not liable to Income tax?

(c) *Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in deleting the addition of Rs.3,11,32,910/- made u/s. 145A of the Income tax Act, 1961 being difference between the closing balance and the opening balance of CENVAT credit?*

(d) *Without prejudice to above question, following question may also arise “ Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that, corresponding deduction is to be granted u/s. 37(1) of the Act and not u/s. 43B?”*

2 In so far as Question (a) is concerned, it arises out of the assessee's objection to a deduction towards contribution made by assessee to various clubs meant for the staff and their family members. The Assessing Officer sought to press in service sub-section 9 of Section 40-A of the Income Tax Act, 1961 (in short "the Act") in this regard. The Tribunal having held the issue in favour of the Assessee, the Revenue is now in appeal before us.

3 We notice that, this Court in Income Tax Appeal No.1169 of 2013 which was filed by the Revenue against this very assessee-Company, had admitted a similar question under an order dated 8th April, 2015. This admission order is a detailed order from which, the Counsel for the Assessee would point out that, before the High Court, the Assessing Officer had relied on a decision of this Court in the case of **CIT v/s. Bharat Corporation Limited, 252 ITR 43** in which, a similar issue was already decided by this Court. The High Court, however, admitted the question, taking note of the fact that, the Gujarat High Court had admitted such a question in case of this very assessee and such appeal was pending.

4 Shri Mistri, learned Senior Counsel points out that, subsequently, the Gujarat High Court in a judgment dated 19th July, 2016 passed in Income Tax Appeal No. 1773 of 2008 and other connected Appeals, has answered the question in favour of the assessee. We may record the concluding observations of the Gujarat High Court in this respect, as under:-

“ So far as issue no.4 is concerned, Mr. Soparkar submitted that the issue is already covered by a decision of this Court in the case of Gujarat State Export Corporation Limited v/s. Commissioner of Income Tax reported in [1994] 209 ITR 649 (Gujarat).

We have heard both the learned counsel and perused the record. We have also gone through the decisions cited before us. The Tribunal has followed its own decision in the case of Gujarat Narmada Valley Fertilizers Co. Ltd., and held in favour of the assessee. This Court in the case of Gujarat State Export Corporation Ltd., (supra) has held that payment of surtax was not an allowable deduction and that by paying the entrance fee to the sports club the assessee had no intention to acquire any capital asset or take advantage for the enduring benefit of the business and that by common sense standards, it could be stated that it was for running the business or for bettering the conduct of its business and therefore, the amount paid as entrance fee was deductible. In view of the said decision, we find that the question raised is required to be answered in favour of the assessee.”

In view of these developments, we do not find reason to entertain this question raised by the Revenue.

5 Question (b) arises out of objections of the Revenue to the Assessee claiming subsidy in the form of Sales Tax Exemption as 'capital receipt'. Revenue would contend that the Sales Tax exemption was in the nature of revenue receipt of the assessee and should have been offered to tax.

6 Counsel for the Assessee would, however, draw our attention to the judgment of the Gujarat High Court passed in Income Tax Appeal No.1773 of 2008 (CIT v/s. IPCL) and other connected matters, dated 19th July, 2016 and contend that, this issue also came up before Gujarat High Court, concerning this very assessee and the Court has answered the question in favour of the assessee. We may reproduce the concluding observations of the Gujarat High Court in this respect as under:-

“ We have heard both the learned counsel and perused the record. We have also gone through the decisions cited before us. After considering the material on record, we are of the view that the issues involved in this appeal are squarely covered by the decisions of Apex Court in the cases of Ponni Sugars and Chemicals Ltd.,(supra), Meghalaya Steels Ltd., (supra), Sri Venkata satyanarayana Rice Mill Contractors Co. (supra), Ajanta Pharma Ltd., (supra) and the decisions of this Court in Tax Appeal No. 226 of 2010, Tax Appeal No. 77 of 2008, Sarabhai M. Chemicals (P) Ltd., (supra). Learned advocate for the revenue is not in a position to convert the law laid down in the aforesaid decisions. Therefore, the questions of law posed for our consideration in these appeals are answered in favour of the assessee and against the revenue. Accordingly, appeal is dismissed.”

7 Previously, when this Appeal was taken up for hearing, Counsel for the Respondent had pointed out this fact. The validity of his contention would depend on the question whether the subsidy scheme examined by the Gujarat High Court in the aforesaid decision was same as considered in the present case by the Tribunal. The learned Counsel Shri Singh was given time to make enquiries and confirm this position.

8 Today, he stated under instructions that the scheme was identical in both cases. Under the circumstances, when one High Court

has examined the scheme and in the case of this very assessee held that, the sales tax waiver benefits were in the nature of capital receipts, no further question of law would arise. Counsel for the Assessee also points out that the Gujarat High Court in the said judgment in case of IPCL (supra) has placed reliance on the decision in the case of **CIT v/s. Nirma Limited** in Income Tax Appeal No.226 of 2010 dated 8th June, 2016. He submitted that in the said case also, the scheme which was under consideration. He points out that the decision of the Gujarat High Court in the case of Nirma Limited (supra) was challenged by the Revenue before the Supreme Court and the Civil Appeal has been dismissed.

9 Question (c) pertains to the addition of a sum of Rs.3.11 Crores (rounded of) made by the Assessing Officer with the aid of Section 145-A of the Act. The Tribunal by the impugned judgment while rejecting Revenue's appeal and confirming the view of the Commissioner of Income Tax (Appeals) [for short "CIT(A)"], relied on its earlier decision in case of this very assessee for earlier Assessment Years. In such decision, the Tribunal had referred to and relied upon the decision of this Court in case of *CIT v/s. Mahalaxmi Glass Works Pvt. Ltd., 318 ITR 116* and judgment of the Delhi High Court in case of *CIT v/s. Mahavir Alluminium Ltd. 297 ITR 77*.

10 This quite apart, Counsel for the assessee points out that such issue was not carried in appeal by the Revenue in the earlier Assessment Year. He drew our attention to the fact that, the Revenue had filed Appeal against the judgment of the Tribunal, however, the present question was not raised in such appeal before this Court. For these reasons, therefore, we do not entertain this question.

11 Question (d) was only presented as an alternative contention by the Revenue and not discussed by the Tribunal. The issue does not arise for our consideration.

12 In the result, **Tax Appeal is dismissed.**

(M.S.SANKLECHA,J.)

(AKIL KURESHI,J.)